

(2009) 05 P&amp;H CK 0227

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Appeal No. 361-DB of 2000

Satia alias Sat Narain

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** May 12, 2009**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 376(2)(f)

**Citation:** (2009) 5 RCR(Criminal) 404**Hon'ble Judges:** Nawab Singh, J; K.S. Garewal, J**Bench:** Division Bench**Advocate:** Gaurav Mohunta, for the Appellant; H.S. Sran, Addl. A.G., for the Respondent**Final Decision:** Dismissed

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**Judgement**

Nawab Singh, J.

This appeal has been filed by Satia alias Sat Narain accused-appellant against the judgment of conviction dated March 8th, 2000 and order of sentence dated March 9th, 2000 passed by learned Additional Sessions Judge, Sirsa, whereby, he was convicted for the offence punishable u/s 376(2)(f) of Indian Penal Code (for short 'the IPC') and sentenced to undergo rigorous imprisonment for a period of 11 years and to pay a fine of Rs. 5000/- with default stipulation.

2. Facts are these : On October 21st, 1998 at about 9 PM, a stupid father-Sham Lal complainant (PW-8) sent her daughter (prosecutrix) (PW-7) aged 10 years to bring a half-bottle of whisky from the liquor vend at Ellenabad. She did not return for about one and a half hours. Complainant along with his brother Ashok Kumar went to the liquor vend but she was not found present there. Salesman at the liquor vend informed the duo that the accused had taken his daughter towards the bus stand, Ellanabad. Both the brother proceeded towards the bus stand. When they reached near Ladha Patrol Station, they heard the cries of the prosecutrix from behind petrol the Station, They towards the field behind the Patrol Station and found the

prosecutrix and the accused naked. The accused raped her. The accused was apprehended on the spot. But when they were making inquiries from the prosecutrix, he managed his escape.

3. Prosecutrix was taken to Civil Hospital, Ellanabad for medical examination but the medical examination could not be conducted because there was no lady Medical Officer available at that time. It was too late in the night. Complainant, his wife and the prosecutrix came to their house.

4. On October 22nd, 1998, complainant made his statement (Exhibit PC) to Subh Ram, Station House Officer, Police Station, Ellanabad (PW-10) who appended his endorsement (Exhibit PC/2). The First Information Report (Exhibit PC/1) was recorded in Police Station, Ellanabad against the accused.

5. The prosecutrix accompanied by her parents was brought to Primary Health Center, Jag Malera by Subh Ram (PW-11) for medical examination. He moved application (Exhibit PK/1) to the Medical Officer to examine the prosecutrix. The prosecutrix was medically examined by Dr. Sudha Garg (PW-1). Medico-legal report (Exhibit PA) was prepared.

6. On October 23rd, 1998, accused was arrested. He was medically examined by Dr. V.K. Mehta (PW-9). He opined that on physical and genital examination, there was nothing to suggest that accused was incapable of sexual intercourse. The clothes of the accused viz. shirt, pajama, vest and the underwear were taken into possession by the Investigator vide memorandum (Exhibit PG). The clothes were sent to Forensic Science Laboratory, Haryana Madhuban, Karnal (for short 'FSL') for analysis. Human semen was detected on the kachha and pajama. The grouping was inconclusive. After completion of the investigation and other formalities, the accused-appellant was arraigned for trial.

7. Charge, in respect of commission of offence punishable u/s 376(2)(f) IPC was framed against the appellant. He abjured guilt and claimed trial.

8. In support of its case, prosecution examined Dr. Sudha Garg (PW-1), Madan Lal (PW-2), Ram Kumar (PW-3), Partap Singh (PW-4), Chand Ram Assistant Sub-Inspector (PW-5), Subhash Chander (PW-6), Miss Ruby Rani (PW-7), Sham Lal (PW-8), Dr. V.K. Mehta (PW-9), Ashok Kumar (PW-10), Shubh Ram (PW-11) and Rajinder Singh (PW-12).

9. In his examination u/s 313 of Code of Criminal Procedure, the accused pleaded that he moved an application to the then Chief Minister, Haryana against Sham Lal complainant levelling allegations that Sham Lal had not given him 'Dara Satta' (gambling amount). Sham Lal was challaned by the Police under the Gambling Act. Prosecutrix has deposed against him at his instance. The prosecutrix received injuries on vulva while she was playing. It was also pleaded that false case was registered against him due to enmity.

10. The evidence on record, material circumstances of the case and the arguments addressed by the learned counsel for the parties have been appraised.

11. The twofold contention of the learned counsel for the accused-appellant is that Dr. Sudha Garg (PW-1) had found that the hymen of the prosecutrix was intact and, therefore, the charge for rape u/s 376 IPC as defined in Section 375 IPC has not been made out. The present case was registered against the accused-appellant as father of the prosecutrix was inimical towards him on account of his moving complaint against him to the then Chief Minister, Haryana.

12. To appreciate the evidence and the contention of the learned counsel for the accused-appellant, firstly, medical evidence of the prosecutrix is to be seen.

13. Dr. Sudha Garg (PW-1) medically examined the prosecutrix on October 22nd, 1998. Medico-legal report (Exhibit PA) was drawn. She found that there was slight swelling on labis majora and little redness and tenderness around hymen. Redness was also present on the vulva. Hymen was intact. There was difficulty in walking. It was also stated by her that per her opinion (Exhibit PB), possibility of slight penetration upto vulva cannot be ruled out. There was no full penetration. However, in her cross-examination, she deposed that on account of presence of fourchette fossa nova coliris, there was no attempt of penetration nor any penetration was made. This part of the cross-examination of the Medical Officer was also highlighted by the appellant's counsel to show that rape was not committed.

14. The prosecutrix (PW-10) deposed that on October 21st, 1998 at 9 PM, on the asking of her father, she had gone to bring liquor from the liquor vend. She was coming back to her home. Accused met her on the way, who resides near her house and also used to purchase vegetables from her father's shop. The accused asked her as to where she was going. She replied that she was going to her house. The accused asked her to accompany him as he was going towards her house and would drop her. The accused took her towards Bus Stand on the pretext that he was having some work to do on that side. When she again asked as to where he was taking her, he gagged her mouth and threatened her with dire consequences. The accused took her in the field behind the Patrol Station. He asked her to put off her pant but she refused. The accused started beating her and thereafter, he put off her pant and his pajama, kachha and committed rape upon her after taking her in his lap. The accused also kissed her. He put his penis inside her vagina. She felt pain and raised alarm which attracted her father and uncle Ashok Kumar. The accused was captured on the spot but while her father and uncle were asking her about the occurrence, he fled away from the scene. Sham Lal (PW-8) father of the prosecutrix has also corroborated the version narrated by the prosecutrix that he heard the shrieks of his daughter from the field situated behind the Petrol Station and reached there. He noticed his daughter and the accused in naked condition. The accused was apprehended on the spot but he managed to escape.

15. From the medical and ocular evidence, question arises as to whether prosecutrix was raped by the accused or not ? Rape is defined u/s 375 IPC and it reads as follows :

375 Rape - A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions :

First. - Against her will

Secondly. - Without her consent.

Thirdly - With her consent, when her consent has been obtained by putting her or to any person in whom she is interested in fear of death or of hurt.

Fourthly. - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. - With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly - With or without her consent, when she is under sixteen years of age.

Explanation. - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception - Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

16. A plain reading of explanation to Section 375 IPC shows that it is sufficient if penis finds only an access into vagina, without there being an actual entry of penis through vagina and during such process, the male organ comes into contact with any other external portions of female genital organ such as, vulva/pudendum, labia majora, labia minora etc. and that would constitute the sexual intercourse which is necessary for the offence of rape. Thus, to put it short, though ordinarily, "penile-vaginal entry" is essential to constitute sexual intercourse, "penile-accessing", which is described above is sufficient to attract the sexual intercourse which is necessary for the offence of "rape". In State of U.P. v. Babul Nath, 1995 (1) RCR CrL 100 (SC), Hon"ble Supreme Court while dealing with the basic ingredients of the offence u/s 375 IPC observed that to constitute the offence of rape, it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Section 375 and 376

IPC.

17. An identical question was considered by Hon"ble Supreme Court in Santosh Kumar v. State of M.P., 2006 4 RCR CrI. 123 SC and it was held in paragraph No. 10 as under :

10. The question, which arises for consideration, is whether the proved facts establish the offence of rape. It is not necessary for us to refer to various authorities as the said question has been examined in considerable detail in Madan Gopal Kakkad v. Naval Dubey, 1992 (3) RCR (Cri) 461 and paras 37 to 39 of the said judgment are being reproduced below :

37. We feel that it would be quite appropriate, in this context, to reproduce the opinion expressed by Modi in Medical Jurisprudence and Toxicology (Twenty First Edition) at page 369 which reads, thus :

Thus to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one.

38. In Parikh's Textbook of Medical Jurisprudence and Toxicology, the following passage is found :

Sexual intercourse. - In law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains.

39. In Encyclopedia of Crime and Justice (Vol. 4) at page 1356, it is stated :

even slight penetration is sufficient and emission is unnecessary.

18. In view of the legal position envisaged hereinbefore vis-a-vis the definition of rape, it is proved from the medical evidence as well as the evidence of the prosecutrix that accused committed rape upon her. No weightage can be given to the statement of Dr. Sudha Garg (PW-1), who medically examined the prosecutrix and stated in her cross-examination that in view of the presence of fourchette fossa nova coliris, there was no attempt of penetration, particularly when, in her

examination-in-chief and also opinion (Exhibit PB), she had categorically stated that possibility could not be ruled out that there was penetration upto vulva. The evidence has to be read in its entirety and not in isolation and in the light of what Modi concluded in the extracted para. It appears that Dr. Sudha Garg was not aware of what rape in legal parlance means. As observed earlier, in legal parlance, slightest degree of penetration of the vulva by the penis with or without emission of semen is sufficient to constitute the offence of rape. Indisputably, there had been penetration of penis of the accused into the vagina of the prosecutrix though penetration was slight. Had there been no penetration of penis into vagina of the prosecutrix, there would have been no question of swelling on labia majora and redness and tenderness around hymen and vulva. There were stains of semen found on the underwear and pajama worn by the accused. This also suggests his involvement in the sexual activity. The accused had no explanation why the stains of human semen were found on his underwear and pajama. In view of this, submission of the learned counsel for the accused-appellant that the medical evidence does not establish the offence of rape, is not sustainable and is, therefore, repelled.

19. The next contention of the learned counsel for the accused-appellant that false case was foisted upon him because father of the prosecutrix had animus against him as he filed a complaint against him before the then Chief Minister, Haryana, is also devoid of merit. Father of a girl of the tender age of 10 years cannot, at all, be expected to set up such a case and thereby, mar the whole life of his child. The defence of the accused on this aspect is not at all, convincing and hence, this submission has no force and is, therefore, rejected.

20. The veracity of the prosecutrix in this case could not be doubted. Her statement has been corroborated by her father Sham Lal (PW-8). The account given by both these witnesses is thoroughly consistent and convincing. In addition to this, the medical evidence as discussed above and presence of semen on the clothes of the accused bring the guilt home.

21. Learned trial Judge rightly held that the accused-appellant committed rape upon the prosecutrix. The evidence and circumstances were correctly marshaled by learned trial Judge in arriving at the finding of guilt against the accused-appellant.

22. For the reasons recorded supra, this Court does not find any infirmity in the impugned judgment. Thus, the appeal is dismissed.

23. Satia alias Sat Narain accused-appellant was released on bail by this Court during the pendency of the appeal. His bail/surety bonds are cancelled. He be arrested and sent to jail to undergo the remaining part of sentence. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.